IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8332 OF 2007

Mrs.M.M.Patel & Ors. .. Petitioners.

V/s.

Hirachand Chhogamalji Jain & Ors. .. Respondents.

Mr.D.J.Lulia for petitioners.

Mr.Sameer Bhalekar for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th NOVEMBER, 2007.

P.C.:

1. Heard Mr.Lulia appearing for the petitioners and Mr.Bhalekar appearing for respondent No.1. It is not necessary to direct service upon respondent No.2-original defendant No.1 and respondent No.3-original defendant No.2. Service is, therefore, dispensed with.

2. The Chamber Summons was filed by the petitioners being Chamber Summons No.732 of 2007 in the suit filed by the original plaintiff-respondent No.1 being Suit No.3919

of 2001.

3. The Chamber Summons prayed for impleadment of applicants as defendants inasmuch as they claim that instead of the original defendant Nos.2 and 3, they have purchased the suit property. They have also pointed out that earlier they were the constituted attorneys and thereafter, there is a Conveyance Deed dated 7th January, 1999, executed in their favour. Each of the documents, which have been referred to in the affidavit in support of the chamber summons are not dealt with nor any affidavit of reply is filed, yet, this Chamber Summons has been rejected.

4. Having perused the Chamber Summons and the affidavit in support so also the impugned order and considering the arguments advanced by both sides, in my view, the Trial Court was in complete error. The Trial Court ought to have appreciated that the Supreme Court has time and again observed that the landlord / owner is a necessary party to the proceedings between a occupant and the B.M.C., challenging the actions of the B.M.C., threatening demolition of the premises. The structure on the land of the owner is something in which the owner has interest and such interest is sufficient to implead him as

a party defendant. The Trial Court has completely lost sight of this aspect and has erroneously rejected the request of the petitioners. Merely because the suit is of the year 2001 is not a ground to reject the application.

5. I have satisfied myself that the interest of justice would be subserved if the chamber summons is granted in terms of the prayer clause (a). Accordingly Rule is made absolute.

6. However, the petitioners before me to pay costs quantified at Rs.1,500/- to the original plaintiff. Costs to be paid within a period of two weeks from today. Amendment to be carried out within a period of four weeks from today. Upon a copy of the amended plaint being served, the petitioners shall file their written statement within a period of four weeks thereafter. Suit to proceed thereafter on its own merits. All contentions of both sides on merits are expressly kept open.

(S.C.Dharmadhikari, J.)